Calendar No. 680

100TH CONGRESS
2d Session

SENATE

REPORT
100-351

AMENDING SENATE RESOLUTION 28 (99TH CONGRESS), RELATING TO TELEVISION AND RADIO COVERAGE OF THE SENATE, TO CLARIFY THE PROHIBITION ON THE USE OF TAPE DUPLICATIONS OF RADIO OR TELEVISION COVERAGE OF SENATE PROCEEDINGS

MAY 19 (legislative day, MAY 18), 1988.—Ordered to be printed

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Mr. FORD, from the Committee on Rules and Administration, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. Res. 43]

The Committee on Rules and Administration, having considered S. Res. 431, an original resolution to amend Senate Resolution 28 (99th Congress), relating to television and radio coverage of the Senate, to clarify and modify the prohibition on the use of tape duplications of radio or television coverage of Senate proceedings, reports the measure favorably and recommends that the resolution do pass.

PURPOSE OF THE RESOLUTION

This resolution would amend section 6 of S. Res. 28 (99th Congress, 2d Session) by—

(1) treating the use of taped television coverage of the Senate proceedings in the same manner as taped radio coverage;

(2) prohibiting the use of such tapes for political campaign purposes and requiring any person or organization that acquires them from the Senate (except public or commercial news organizations) to agree in writing not to use them for such purposes; and

(3) allowing the use of taped television coverage of the Senate proceedings for other purposes.

S683-4

BACKGROUND

On February 27, 1986, (99th Congress, 2d Session) the Senate passed S. Res. 28, authorizing television and radio broadcast coverage of Senate floor proceedings on a trial basis. Section 6 of S. Res. 28 provides as follows:

> Sec. 6. The use of tape duplications of radio coverage of the proceedings of the Senate for political purposes is strictly prohibited; and any such tape duplication furnished to any person shall be made on the condition that it not be used for political purposes. The use of tape duplications of television coverage for any purpose outside the Senate is strictly prohibited until the Senate provides otherwise.

As a consequence of the prohibition against use of the taped television coverage outside the Senate for any purpose, the Senate Recording Studio, which records all Senate sessions on tape, may not transmit copies of the tapes to the Library of Congress or to the National Archives to make them available for educational or research purposes. This has also raised problems for the Recording Studio, which is running out of space for storage of the tapes.

In addition, the rule as now written prohibits uses which were originally given as justification for televising the Senate proceedings. Concern over misuse in political campaigns has precluded availability of tape duplications of Senate proceedings for classroom material, historical research and documentary programs. The committee wishes to remove the bar to such nonpolitical uses.

COMMITTEE ACTION

On April 19, 1988, the committee met to consider S. Res. 431. This original resolution would amend section 6 of Senate Resolution 28 (99th Congress) as follows (existing test proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing text in which no change is proposed is shown in roman):

SEC. 6. *(a)* The use of *any* tape duplication [s] of radio *or television* coverage of the proceedings of the Senate for political *campaign* purposes is strictly prohibited [; and].

(b)(1) Except as provided in paragraph (2), any [such] tape duplication *or radio or television coverage of the proceedings of the Senate* furnished to any person *or organization* shall be made on the condition, *agreed to in writing,* that [it] *the tape duplication shall* not be used for political *campaign* purposes. [The use of tape duplications of television coverage for any purpose outside the Senate is strictly prohibited until the Senate provides otherwise.]

(2) Any public or commercial news organization furnished a tape duplication described in paragraph (1) shall be subject to the provisions of paragraph (1) but shall not be required to enter into a written agreement.

Under the proposed revision to section 6 of S. Res. 28, the use of any tape duplication of radio or television coverage of the proceedings of the Senate for political campaign purposes is strictly prohibited. Any individual or organization that is furnished a tape by the

Senate must agree in writing not to use it for political campaign purposes. Although any public or commercial news organization that is furnished a tape would receive it upon condition that it not be used for political campaign purposes, they would be exempt from the requirement for a *written* agreement, due to the impracticality of collecting written agreements from every recipient of recordings transmitted via satellite or telephone lines.

Enforcement of the prohibition against use of the tapes for political campaign purposes, and the possibility of imposing penalties for violations were discussed. In that regard, the committee considered the possibility that media broadcast licensees who violate the prohibition might jeopardize their license by such violation. The committee was aware, however, that such methods could raise serious practical and constitutional questions and could not, in any case, be dealt with in the context of the vehicle before the committee, a Senate resolution.

The committee is also aware that the present broad prohibition against the use of tape duplications has produced a double standard under which Members of the Senate have had to abide by a complete prohibition, while others, not within the Senate's jurisdiction, have been free to utilize tapes of Senate proceedings.

Although the proposed revision does not resolve completely the enforcement issue or the problem of a double standard, it was determined that the proposed resolution would be less restrictive than the present rule, would permit uses of the tapes that further the very purposes for which the Senate proceedings are televised, and would widen the possibilities for such non-political uses in the future.

The committee unanimously approved and ordered reported the accompanying resolution.

COST ESTIMATE

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the committee does not consider that enactment of Senate Resolution 431 would entail any cost to the Government.

REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the committee does not consider that enactment of Senate Resolution 431 would have any significant regulatory impact.

ADDITIONAL VIEWS OF SENATORS STEVENS, HATFIELD, McCLURE, AND WARNER

We support the action of the Committee to ease the restrictions on use of tape duplications of Senate television coverage. However, while the partial lifting of restrictions is unquestionably an improvement over the status quo, we believe for the reasons outlined below that a total elimination of restrictions on use of Senate television tapes would be more appropriate.

CONSTITUTIONALITY

Currently, Senate Resolution 28 (99th Congress) provides that "the use of tape duplications of television coverage for any purpose outside the Senate is strictly prohibited until the Senate provides otherwise." While we share the concern that these tapes not be used to represent unfairly the positions of a Senator or to undermine the integrity of the Senate, we do not believe that we can constitutionally interfere with any use of these tapes.

Proceedings on the Senate floor enter the public domain the moment they take place. We believe that any prior restraint on the rebroadcast of public proceedings of our national legislature, for whatever purpose, is suspect under the strict scrutiny required by the First Amendment to the Constitution.

Political speech or expression, including debates on candidates and public issues in upcoming elections, has been found by the Supreme Court to be "at the heart of the First Amendment's protection." *First National Bank of Boston* v. *Belloti,* 435 U.S. 765, 776 (1978). The Court in *Mills* v. *Alabama,* 384 U.S. 214, 218 (1966), noted that "there is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs, of course includ[ing] discussions of candidates. * * *" And as the Court observed in *Nebraska Press Association* v. *Stuart,* 427 U.S. 539, 559 (1967), "the thread running through all these cases is that prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights."

Therefore, while we support the Committee's action insofar as it moves toward the elimination of current restrictions on use of the television tapes, we believe a total elimination of the restrictions would be more consistent with existing constitutional principles.

ENFORCEMENT

Based on our conviction that the Constitution does not permit restriction on use of Senate television tapes, we would not support any provisions to enforce such restrictions. During the Committee's deliberations, one Member of the Committee suggested enforcing the proposed restriction on use for political campaign purposes

through suspension of broadcast licenses. Restricting the right of FCC licensees to rebroadcast Senate floor proceedings for any reason would, in our view, be constitutionally suspect.

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